U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF L-R-R-

DATE: MAR. 22, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a metallurgical engineer, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After the petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Petitioner appealed the matter to us, and we dismissed the appeal.[1]

The matter is now before us on a combined motion to reopen and reconsider. On motion, the Petitioner submits a brief and additional evidence.

Upon review, we will deny the motions.

I. LAW

A motion to reopen is based on documentary evidence of new facts, and a motion to reconsider is based on an incorrect application of law or policy. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2), and the requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3).

[1] *See Matter of L-R-R-*, ID# 3448049 (AAO Aug. 21, 2017).

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
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> > (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> > (B) Waiver of job offer –
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> > > (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term "national interest," *Dhanasar* stated that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates by a preponderance of the evidence: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[2]

II. ANALYSIS

A. Background

The Petitioner states that she intends to continue her work as a metallurgical engineer with [redacted] a manufacturer of premium steel wire and wire products, where she has been employed since February 2016.[3] The record includes a statement from [redacted]

[2] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

[3] As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for her to have a job offer

general manager of [redacted] stating that the Petitioner will contribute to the planning and definition of technical specifications and execution of fundamental projects including: designing and planning a new galvanizing plant for the company's California operations, preparing for the arrival of a new customized EVG mesh machine, metallurgical metallographic analysis for rod material, serving as lead auditor for a transition to a new quality management system, evaluation and qualification of U.S. mill rod suppliers, and conducting all failure analysis and fracture mechanics including high tensile strength mesh testing.

Further, counsel's brief in response to our RFE claimed that, in addition to her engineering duties, the Petitioner "has the capacity to work as a research consultant for the oil and gas industry that will improve refinery efficiency, increase production, reduce costs, and maximize plant operations." Counsel further explained that she also has the ability to serve the defense aviation industry "opening new avenues of investigation in the aerospace materials field," and that her work will contribute to the "development of more complex light alloy composite materials for innovative applications involving magnetic properties, low density, and reduced fabrication costs to be used in aviation and aerospace structures."

In denying the Petitioner's appeal, we found that she had established that she is well positioned to advance her proposed endeavor of supporting [redacted] production and manufacturing projects under the second prong of the *Dhanasar* framework. However, we determined she had not met the first prong because she had not established that her proposed endeavor was of national importance.[4] Specifically, we determined that the Petitioner had not established that her proposed work as a metallurgical engineer will have implications beyond her company and its customers at a level sufficient to establish its national importance. We also noted that the Petitioner had not provided sufficient details about the capacity in which she would work as a researcher or consultant to demonstrate the potential implications of such work. The Petitioner now files the current combined motion to reopen and reconsider claiming that she provided sufficient evidence establishing that she has met the prongs of the *Dhanasar* framework. She also provides additional evidence, which we address below.

B. Motion to Reconsider

A motion to reconsider is based on an *incorrect application of law or policy*. 8 C.F.R. § 103.5(a)(3). A request to reanalyze documentation without showing how we incorrectly applied law or policy does not meet the requirements of a motion to reconsider.

In her motion to reconsider, the Petitioner asserts that our appellate decision, with regard to the first prong of the *Dhanasar* framework, was based on an incorrect application of law or policy, and that

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from a specific employer. However, we consider information about her position with [redacted] to illustrate the capacity in which she intends to work.

[4] We noted that, as the Petitioner had not met the first prong of the *Dhanasar* framework, she is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

her previously submitted evidence established eligibility. She states that "metallurgical engineering does implicate and affect the national interest of the United States."[5] However, she does not specifically explain how we incorrectly applied the relevant law, nor has she identified documentation that we overlooked or misinterpreted.

Here, we find no error in our previous determination. In our prior decision, we analyzed the evidence relating to the Petitioner's proposed work and found that the record did not adequately document that the specific work she proposed to undertake offers original innovations that advance the steel and wire industry, or otherwise has broader implications in the field of metallurgical engineering. For purposes of a motion to reconsider, the question is whether our decision was correct based on the record that existed at the time of adjudication. On motion, the Petitioner states that the United States is in a historical moment in developing and maintaining productivity in the steel industry, making the Petitioner's proposed work of substantial benefit to U.S interests. However, she does not cite to any relevant law, regulation, or precedent establishing that our previous findings were based on an incorrect application of the law, regulation, or USCIS policy, nor does the motion demonstrate that our latest decision was erroneous based on the evidence before us at the time of the decision.

C. Motion to Reopen

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). The regulation at 8 C.F.R. § 103.5(a)(2) does not define what constitutes a "new" fact, nor does it mirror the Board of Immigration Appeals' definition of "new" at 8 C.F.R. § 1003.23(b)(3) (stating that a motion to reopen will not be granted unless the evidence "was not available and could not have been discovered or presented at the former hearing"). Unlike the Board regulation, we do not require the evidence of a "new fact" to have been previously unavailable or undiscoverable. Instead, we interpret "new facts" to mean facts that are relevant to the issue(s) raised on motion and that have not been previously submitted in the proceeding, which includes the original petition. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts."

In our previous decision, we noted that the Petitioner did not meet the first prong of the *Dhanasar* framework based upon her proposed work as a metallurgical engineer, as it would not impact the field of metallurgical engineering more broadly. Rather, the record indicates that her work will be limited to her company and its customers. Accordingly, we found that her proposed engineering activities do not meet the "national importance" element of the first prong of the *Dhanasar* framework.

[5] We note that the relevant question is not whether the *field* of intended work has national importance; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. For instance, in *Dhanasar*, although we acknowledged the merit of "STEM" teaching in relation to U.S. educational interests, we found the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

We further found that the Petitioner did not provide sufficient detail explaining the capacity in which she intends to work as a "researcher" or "consultant." We noted that, although the Petitioner's past graduate work involved research and development of metallurgical techniques, the record did not indicate her proposed work as a metallurgical engineer would be not focused on conducting original research.

In the motion to reopen, the Petitioner offers a 2017 profile of the discussing the impact of the steel industry on the U.S. economy and an excerpt from an article about policy regarding the U.S. steel industry. As noted previously, in determining national importance, we focus not on the broader field or industry in which the individual will work, but on "the specific endeavor that the foreign national proposes to undertake." *Id.* at 889. She also provides a letter from director of the – nanotechnology center, and the Petitioner's graduate thesis advisor. writes that the Petitioner conducted original research that was subsequently published in a peer reviewed journal, , in 2009. He explains that her research led him to continue his work in other related areas. While letter offers an example of the Petitioner's past research accomplishment, it does not offer additional detail explaining the capacity in which she proposes to conduct original research or offer consulting services in the future.

The submission on motion also includes an affidavit from the Petitioner stating that she intends to work in "engineering and metallurgy research and development" and "to provide responsible solutions as an independent consultant." She states that she intends to utilize her expertise to "develop new alloys, lab tests for processes improvement, materials processing and manufacturing, development of new methods to understand steel fracturing and collapsing, energy field and materials performance." Her statement does not include an explanation detailing how she intends to carry out this research, how it will fit into her proposed metallurgical engineering duties, or the manner in which she intends to work. Without additional information explaining the nature of her proposed research or consulting work, we cannot determine its potential implications and whether it is of national importance. As such, the evidence does not establish that the Petitioner has met the first prong of the *Dhanasar* framework.

Further, in our previous decision, we noted that, even if the Petitioner had demonstrated that she would primarily be engaged in metallurgy research that would stand to have broader implications for the field, she did not establish she would be well positioned to advance such a research endeavor under the second prong of the *Dhanasar* framework.[6] On motion, the Petitioner has not presented sufficient evidence to overcome that finding.

Finally, the Petitioner's motion to reopen does not include new evidence relating to the third prong of the *Dhanasar* framework. As stated in our previous decision, because the Petitioner has not established the national importance of her proposed endeavor as required by the first prong of the

[6] *Matter of L-R-R-*, at 6, n.8.

Dhanasar framework, she is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

III. CONCLUSION

In this matter, the motion to reconsider does not demonstrate that our previous decision was incorrect and the evidence provided in support of the motion to reopen does not overcome the grounds underlying our previous decision.

ORDER: The motion to reconsider is denied.

FURTHER ORDER: The motion to reopen is denied.

Cite as *Matter of L-R-R-*, ID# 1034011 (AAO Mar. 22, 2018)